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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 LEXCLAIM RECOVERY GROUP US
15 LLC,

Case No. 25-cv-428

16 Plaintiff,
17 vs.
18 PATREON, INC.,

Related to *Stark v. Patreon, Inc.*, No.
3:22-CV-3131-JCS

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Date: January 13, 2025

Preliminary Statement

1. Defendant Patreon, Inc., offers videos for its subscribers to watch on its website, *patreon.com*. Patreon, using something called the Meta Pixel, then sends the title of every video its subscribers watch alongside personally identifying information to Meta Platforms Inc. This is a clear violation of the Video Privacy Protection Act (VPPA). The VPPA, which recognizes that our video-viewing habits are intimately private, requires companies that sell, rent, or offer subscriptions to prerecorded videos to maintain their customers' privacy and forbids, among other things, the knowing disclosure of customers' video choices to any third party without the customers' specific advance consent.

2. Congress believed that VPPA violations effected invasions of personal privacy severe enough to justify a statutory damages award of \$2,500 per violation. In 2022, a class-action case was filed against Patreon alleging VPPA claims on behalf of millions of Patreon subscribers. That case resulted in a settlement with approximately \$4,165,000 allocated for damages payable to at least 1.4 million class members and permanently releasing all of their claims unless they affirmatively opt-out of the settlement in writing. The parties estimate that on average only 5% of class-members will even submit a claim, leaving each claimant with approximately \$56 and everyone else nothing at all.

3. Plaintiff Lexclaim Recovery Group US LLC is the assignee of the claims of 927 Patreon accountholders, each of whom subscribed to and watched videos on Patreon, each of whom was logged into a Facebook account while watching videos (activating the most invasive of Meta’s tracking software), and each of whom opted out of the settlement. The assignors “assign[ed], transfer[ed], convey[ed], and set[] over, without recourse, to Lexclaim all rights in, title to, and interest in any and all causes of action Assignor[s] may now have, whether or known or unknown, discovered or undiscovered, against Patreon Incorporated related to any violation of the Video

1 Privacy Protection Act.” In exchange, the assignors received a guaranteed payment
2 of \$10 from Lexclaim and the right to 20% of any money Lexclaim recovers in
3 connection with their claims.

4 4. Lexclaim brings this action to recover the damages Congress believed
5 each of the assignors was entitled to as a result of Patreon's knowing violation of their
6 rights under the VPPA.

Parties

8 5. Plaintiff Lexclaim Recovery Group LLC is a Wyoming limited-liability
9 company headquartered in Washington, D.C. No member of Lexclaim is a citizen of
10 California or Delaware.

11 6. Defendant Patreon, Incorporated is a Delaware corporation
12 headquartered in San Francisco, California.

Jurisdiction

14 7. This Court has subject-matter jurisdiction over this Action under 28
15 U.S.C. § 1331 because it arises under federal law, and also under 28 U.S.C. § 1332
16 because all members of Lexclaim are citizens of different states than Defendant.

17 8. This Court may exercise general personal jurisdiction over Patreon
18 because its principal place of business is in California.

Venue

20 9. Venue is proper in this District under 28 U.S.C. § 1331(b) because a
21 substantial part of the events or omissions giving rise to the claims occurred in this
22 District and because Patreon is headquartered here.

Divisional Assignment

24 10. Pursuant to Civil L.R. 3-5(b), assignment to the San Francisco Division
25 is appropriate under Civil L.R. 3-2(c) because Patreon is headquartered in San
26 Francisco and a substantial part of the conduct at issue in this case occurred in San
27 Francisco County.

1 **The Meta Pixel's Surveillance of Private Internet Activity**

2 11. Meta, which operates Facebook, and is accordingly the world's largest
3 social-media company, makes almost all of its money selling targeted advertising. To
4 target people with advertising, Meta must collect their data so that it can learn their
5 personal characteristics and preferences. One way Meta collects peoples' data is
6 through the Meta Pixel.¹

7 12. The Meta Pixel is a piece of software code that Meta offers to websites
8 and services, like Patreon, to integrate into their websites. Meta offers the Pixel free
9 of charge to these sites because the sites agree to give Meta their users' data—in other
10 words, in exchange for Meta's help in collecting and analyzing their users' data for
11 targeted advertising, these websites give Meta their users' data and let Meta use it
12 for any purposes Meta sees fit.

13 13. When a user accesses a website with a Meta Pixel installed, the Pixel—
14 operating completely in the background, and without users' knowledge or consent—
15 sends a message from the website's server to Meta containing, at least, the user's IP
16 address (a unique number identifying an internet user) and the fact that they
17 interacted with the website.

18 14. Specifically, this message contains the content of the original request
19 sent to the host website along with the data that the host website operator configured
20 the Meta Pixel to collect, which can include every single key stroke or mouse
21 movement a user makes on a website.

22 15. Meanwhile, Meta's core business model requires that it be able to track
23 users' activity and link it to known facts about those users. To do this, Meta uses
24

25

26 ¹ See FACEBOOK, *About Customer Audiences*,
27 <https://www.facebook.com/business/help/744354708981227?id=2469097953376494> (last visited Jan.
28 9, 2025); FACEBOOK, *About Lookalike Audiences*,
29 <https://www.facebook.com/business/help/164749007013531?id=401668390442328> (last visited Jan. 9,
30 2025).

1 common pieces of software called “cookies.” A cookie is a small block of data created
2 by a web server while a user is browsing a website and placed on the user’s computer
3 or the user’s web browser.

4 16. Any time a user visits a Meta website, cookies are sent to the user’s
5 browser by which Meta can subsequently identify that specific user if they return to
6 any Meta website. Anyone who uses Facebook or Instagram—Meta’s two most
7 popular social networks—is sent a cookie that will immediately link that user to the
8 user’s personal account.

9 17. Meta uses these cookies to link the information it gathers from the Pixel
10 with Facebook and Instagram accounts. Indeed, Meta tells advertisers that it “relies
11 on Facebook cookies, which enable [Meta] to match your website visitors to their
12 respective Facebook User accounts,” and thereby to create precise audiences to target
13 with advertising.

14 18. Subscribers with Facebook accounts are assigned a “c_user” cookie from
15 Meta. Any person armed with a user’s c_user cookie can immediately identify that
16 user’s Facebook page by simply typing “www.facebook.com/[c-user cookie]” with that
17 user’s c_user cookie number. For example, Meta CEO Mark Zuckerberg’s number is
18 four and the URL “www.facebook.com/4” will take you to Mark Zuckerberg’s Facebook
19 page. The c_user cookie is active while users are logged in to their Facebook accounts.

20 19. Subscribers with Facebook accounts are also sent cookies called “datr”
21 and “fr” cookies. These cookies allow Meta to identify users when they are not logged
22 in to Facebook, and at least the datr cookie is active for two years after a user was
23 last logged in to Facebook. Although the public cannot necessarily use datr and fr
24 cookie values to identify individual users, Meta immediately can.

25 20. Facebook and Instagram accounts, unsurprisingly, contain a wealth of
26 personal information about their users, almost always including their names,
27 photographs, and biographical information.

1 21. Any time Facebook users visit a website with the Pixel installed and
2 with third-party cookies enabled on their browser, then, the website sends Meta a
3 data packet by which the users' activity on the site is immediately personally
4 identifiable.

5 **Patreon Operates A Subscriber Website And Discloses Members' Private**
6 **Viewing Information to Meta**

7 22. Patreon's accountholders ("Subscribers") can access a variety of content
8 on Patreon's website, including music, podcasts, and video content posted by content
9 creators.

10 23. Many of Patreon's Subscribers pay Patreon subscription fees, typically
11 on a monthly basis. The subscription fees vary because they are related to which
12 creators and shows a Subscriber wishes to follow.

13 24. Patreon provides and delivers prerecorded audiovisual content to its
14 Subscribers.

15 25. Patreon allows content creators to upload or share prerecorded videos,
16 which Patreon Subscribers can then view on the content creator's page.

17 26. The assignors requested and viewed prerecorded audiovisual content
18 from Patreon while in the United States.

19 27. Collectively, the assignors watched approximately 10.4 million pre-
20 recorded videos on Patreon between April 1, 2016, and December 8, 2024.

21 28. While assignors were viewing prerecorded video content on Patreon's
22 website, all of them had active Facebook accounts and were logged in to their
23 Facebook accounts.

24 29. While assignors were viewing prerecorded video content on Patreon's
25 website, Patreon transmitted the titles of the videos they were watching to Meta.

26 30. Patreon's transmission of viewing information to Meta includes the
27 specific names of video content viewed by Subscribers, as well as the User's FID—a

1 string of numbers unique to each Facebook profile that personally identifies the User.

2 31. Anyone who possesses an FID may use this number to quickly and easily
3 locate, access, and view the corresponding Facebook profile, which contains personal
4 information, often in large quantities.

5 32. A Facebook profile typically shows the Facebook user's name, gender,
6 place of residence, career, educational history, a multitude of photos, and the content
7 of the user's posts. This information may reveal even more sensitive personal
8 information—for instance, posted photos may disclose the identity of family
9 members, and written posts may disclose religious preferences, political affiliations,
10 personal interests and more.

11 33. Just as Meta can easily identify any individual on its Facebook platform
12 with only their unique FID, so too can any ordinary person who comes into possession
13 of a FID. Facebook admits as much on its website. Thus, equipped with an FID and
14 the video content name and URL—all of which Patreon knowingly provides to Meta
15 without appropriate consent from its subscribers—any ordinary person could
16 determine the identity of the Patreon subscriber and the specific video or media
17 content they viewed on Patreon's website.

18 34. Patreon transmits the FID and video title to Meta in a single
19 transmission, through the Meta Pixel described above. This transmission occurs
20 when a User views a prerecorded video on Patreon's website.

21 35. Patreon knew that by installing the Pixel on its website, the Pixel would
22 send Meta information identifying its Subscribers and their video-watching habits.

23 36. Meta's website explains that, to begin using the Meta Pixel, a business
24 must first “install” the Pixel “by placing the Meta Pixel base code on all pages of your
25 website[.]” Patreon made the conscious decision to undertake this installation
26 process.

27 37. Further demonstrating that Patreon knowingly placed the Pixel in its
28

1 website code, Meta's website states that “[d]evelopers and marketers can optionally
2 choose to send information about” a visitor's activity on its website.

3 38. Meta benefits from websites like Patreon installing its Pixel. When the
4 Pixel is installed on a business's website, the business has a greater incentive to
5 advertise through Facebook or other Meta-owned platforms, like Instagram. In
6 addition, even if the business does not advertise with Facebook, the Pixel assists Meta
7 in building more fulsome profiles of its own users, which in turn allows Meta to profit
8 from providing more targeted ads. The Pixel is installed on websites all over the
9 internet and, accordingly, provides Meta with information about its users'
10 preferences, other distinguishing traits, and web-browsing activities outside of Meta-
11 owned platforms.

12 39. Using the Meta Pixel likewise benefits Patreon's business by improving
13 its ability to promote its content and services to its subscribers, thereby increasing
14 its profits.

15 40. Through use of the Meta Pixel, Patreon discloses to Meta the full name
16 of each video a User watched, together with the User's FID, thus linking Subscribers'
17 viewing content choices and preferences to their Facebook profiles. In other words,
18 this single transmission connects a User's viewing content with their FID.

19 41. Patreon's subscribers, including the assignors here, did not consent to
20 Patreon's disclosure of their prerecorded video and video services requests and their
21 identities to Meta. Upon information and belief, most subscribers and assignors were
22 not even aware that such data sharing was occurring.

23 42. Patreon's website includes its Terms of Use, a Privacy Policy, Data
24 Practices, and a Cookie Policy. None of these informs Subscribers of Patreon's use of
25 the Meta Pixel or its practice of sharing Subscribers' personal information and video
26 content choices with Meta in a way that allows Meta to identify their specific video-
27 watching preferences.

1 43. The VPPA requires that consent be obtained in a form “distinct and
2 separate from any form setting forth other legal or financial obligations of the
3 consumer.” 18 U.S.C. § 2710. At no point were Plaintiffs or other Patreon subscribers
4 given a standalone or any consent form disclosing Patreon’s practices at issue and
5 requesting user consent. Hence, no user knew of or consented to Patreon’s offending
6 practice of sharing video preferences with third parties.

7 44. Patreon shared with Meta the personal information of subscribers,
8 including their video-viewing histories and associated FIDs, which they reasonably
9 expected would be kept private.

The Stark Case And Assignors' Irrevocable Assignment of Their Rights to Lexclaim

12 45. On May 27, 2022, Brayden Stark and Judd Oostyen filed a putative
13 class-action complaint against Patreon in the United States District Court for the
14 Northern District of California alleging violations of the VPPA, among other
15 violations.

16 46. On January 30, 2024, after additional proceedings, the plaintiffs in that
17 case filed a Second Amended Complaint adding additional named plaintiffs. *See Stark*
18 *v. Patreon*, N.D. Cal. No. 22-cv-3131, ECF No. 121.

19 47. Both before and after that filing, the parties conducted a mediation,
20 resulting in a settlement announced in a filing on August 2, 2024. See *Stark v.*
21 *Patreon*, N.D. Cal. No. 22-cv-3131, ECF No. 176-1.

22 48. The *Stark* court granted preliminary approval of that settlement on
23 September 23, 2024. After an initial earlier deadline, it set a modified deadline of
24 January 15, 2025, for settlement class members to opt out. *See Stark v. Patreon*, N.D.
25 Cal. No. 22-cv-3131, ECF No. 195.

26 49. Lexclaim was founded last year to help people recover a greater share of
27 the money to which they would be entitled in class action cases if those cases had not

1 settled.

2 50. Lexclaim does this by offering class members an upfront payment
3 exceeding the average recovery under a class action settlement as well as a
4 percentage of any additional amount recovered in exchange for an assignment of
5 claims. Lexclaim then prosecutes the claims, ensuring that, no matter what, class
6 members are better off on average than they would be under a class action
7 settlement—indeed, under ordinary circumstances, 95% of class members receive
8 nothing at all under a settlement—and providing them a share of any further
9 recovery.

10 51. After the settlement in *Stark* was preliminarily approved, Lexclaim
11 sought out affected class members to offer them a better deal than they would have
12 gotten in the class settlement. Over the course of several weeks, 927 members of the
13 *Stark* settlement class signed agreements reading: “Assignor hereby irrevocable
14 assigns, transfers, conveys, and sets over, without recourse, to Lexclaim all rights in,
15 title to, and interest in any and all causes of action Assignor may now have, whether
16 or known or unknown, discovered or undiscovered, against Patreon Incorporated
17 related to any violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 *et seq.*,
18 or any other applicable law (including, but not limited to, the privacy laws of
19 Assignor’s home state) relating to information privacy.”

20 52. The assignors all averred that they (a) subscribed to Patreon, (b) have
21 Facebook accounts, (c) had Facebook accounts at the same time they were subscribed
22 to Patreon, (d) were, to the best of their knowledge, logged into Facebook on their
23 phones, computers, or other devices at least once while accessing Patreon, (e) watched
24 videos on Patreon while in the United States since April 1, 2016, (f) to the best of
25 their knowledge, did not have any cookie-blocking features enabled, (g) to the best of
26 their knowledge, had not signed out of their Facebook account while watching
27 Patreon videos, and (h) to the best of their knowledge, never gave explicit written
28

consent to Patreon allowing it to share personal information with Facebook.

53. The assignment agreements each provided that they were effective only when signed by both parties.

54. On January 13, 2025, notices executed by each of the assignors were placed in the U.S. mailstream and addressed to the settlement administrator in the *Stark* case, as specified in the public notices and settlement agreement. The notices read “I, [Assignor], hereby request to be excluded from the Class certified on September 23, 2024, in *Stark v. Patreon Inc.*, No. 22-cv-03131-JCS (N.D. Cal.).” Each notice provided the assignor’s name and a dated signature.

55. Later that day, Lexclaim signed the 927 assignment agreements.

56. Later that day, Lexclaim placed in the mail a notice to the settlement administrator in the *Stark* case reading “Lexclaim Recovery Group US LLC hereby requests to be excluded from the Class certified on September 23, 2024, in *Stark v. Patreon Inc.*, No. 22-cv-03131-JCS (N.D. Cal.).” The notice provided a signature from one of Lexclaim’s principals. The notice also attached a list of the names of all of the people who have assigned their claims to Lexclaim.

Claims for Relief

Count One: Violation of the Video Privacy Protection Act, 18 U.S.C. § 2710

57. Lexclaim incorporates all prior paragraphs by reference.

58. The VPPA prohibits a “video tape service provider” from knowingly disclosing “personally identifying information” concerning any “consumer” to a third party without the “informed, written consent . . . of the consumer” and the opportunity to opt out of disclosures. *See generally* 18 U.S.C. § 2710.

59. Patreon is a “video tape service provider” because it is “engaged in the business, in or affecting interstate commerce, of . . . delivery of prerecorded . . . audiovisual materials.” 18 U.S.C. § 2710(a)(4).

60. As defined in 18 U.S.C. § 2710(a)(1), a “consumer” means “any renter,

1 purchaser, or subscriber of goods or services from a video tape service provider.” As
 2 alleged above, assignors are subscribers to Patreon’s services providing video content
 3 to Subscribers on its website and viewed prerecorded videos provided on Patreon’s
 4 platform. Hence, assignors are “consumers” under this definition.

5 61. Patreon disclosed “personally identifiable information” of assignors to
 6 Meta because Patreon sent “information which identifies a person as having
 7 requested or obtained specific video materials” from Patreon, 18 U.S.C. § 2710(a)(3),
 8 specifically the URL and full title of every video watched alongside information that
 9 would allow any member of the public to identify the user.

10 62. Patreon did not seek, let alone get, “informed, written consent” from
 11 assignors in the manner required by statute, 18 U.S.C. § 2710(b)(2), and it never
 12 provided them the opportunity to opt out, 18 U.S.C. § 2710(b)(2)(iii).

13 63. Patreon transmitted personally identifying information to Meta
 14 knowingly: Patreon installed the Meta Pixel, which advertises its ability to link user
 15 activity to Facebook accounts, on its website and configured the Pixel specifically to
 16 gather and disclose to Meta the full title of the videos assignors watched.

17 64. By knowingly disclosing assignors’ personal viewing content, Patreon
 18 violated assignors’ statutorily protected right to privacy in their video-viewing habits
 19 and activities. *See* 18 U.S.C. § 2710(c).

20 65. Assignors validly opted-out of the settlement class in *Stark*.

21 66. Assignors validly and irrevocably assigned all rights to, title to, and
 22 interest in their claims against Patreon to Lexclaim.

23 67. Lexclaim, in an abundance of caution, also opted out of the settlement
 24 class in *Stark*.

25 68. Patreon is thus liable to Lexclaim in the amount of \$2,500 per violation
 26 plus reasonable attorneys’ fees and costs.

1 Prayer for Relief

2 Lexclaim Recovery Group US LLC respectfully request:

3 • An award of statutory damages of \$2,500 per violation of the Video
4 Privacy Protection Act;

5 • An award of reasonable attorneys' fees and costs of litigation;

6 • A trial by jury on all issues so triable; and

7 • Any other relief deemed just and proper.

8

9 Respectfully submitted,

10 */s/ Jason Harrow*

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